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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of MICHAEL GERARD SINGER and JEANNE MARIE SINGER.	
MICHAEL GERARD SINGER, Appellant, v. JEANNE MARIE SINGER, Respondent.	D055392 (Super. Ct. No. DN146261)

APPEAL from orders of the Superior Court of San Diego County, Jeannie Lowe, Commissioner. Affirmed.

Petitioner Michael Singer, a self-represented litigant, appeals from orders denying his motions to compel discovery, for attorney fees and costs, and to modify the family court's interim award of spousal support. As best we understand his contentions,

Michael[1] argues the family court commissioner exhibited bias in favor of respondent Jeanne and her attorney, denied him due process throughout the proceedings, and erred by refusing to consider the assertedly large amount of community debt in calculating interim spousal support. He asks us to alter the interim spousal support order to zero, refund to him all attorney fees awarded to Jeanne, and reassign the case to a different family court judge. Because Michael has not shown error or prejudice with respect to the appealed from orders, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND[2]

In April 2007, Michael filed a petition for dissolution indicating the parties were married on July 22, 1989 and separated 17 years later. Jeanne responded and several months later filed an order to show cause for reasonable spousal support and recovery of her attorney fees and costs. In March and April 2008, the parties, with Michael represented by counsel, entered into several stipulations that Michael would make one-

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1 For purposes of clarity and not out of disrespect, we refer to the parties by their first names.

2 Michael's "Statement of Facts" section of his opening brief is entirely devoid of record support. Under settled appellate principles we presume the evidence supports the family court's factual findings or its orders, and we are bound by the family court's factual findings. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 [reviewing court starts with the presumption that the record contains evidence to support every factual finding]; *Grassilli v. Barr* (2006)142 Cal.App.4th 1260, 1278 [same].) We will also infer findings in support of the family court's order if they are supported by substantial evidence. (See *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 826.) Accordingly, in assessing Michael's appellate contentions, we view the evidence in the light most favorable to the family court's rulings and adopt the uncontested factual findings of the family court as well as those findings that are supported by substantial evidence in the record.

time spousal support payments to Jeanne, and would borrow $17,000 from his 401K plan to cure the defaulted loan on their residence. Shortly thereafter, Michael released his attorney.

A hearing on Jeanne's order to show cause took place on August 4, 2008. In the ensuing September 2008 findings and order after hearing, the family court commissioner ordered Michael to pay spousal support to Jeanne in the amount of $869 per month plus 26 percent of his net bonus, commissions or awards from his employer. At that time, the court found his monthly income to be $8,058 and Jeanne's weekly income to be $940. The court also ordered Michael to pay $5000 toward Jeanne's attorney fees, payable at $300 per month.

In April 2009, following an unsuccessful settlement conference, the matter was set for trial. Thereafter, on April 28, 2009, Michael filed a motion to compel Jeanne to respond to discovery and for an order awarding him $450 in attorney fees and costs for the expenses of his motion. At the same time, he filed points and authorities in support of a motion to modify spousal support, arguing the family court had previously set support using "incorrect and incomplete" information. He asked the court to apply Family Code section 4320 and make certain findings including as to his gross income and expenses, the parties' community debts and his payments on those debts, Jeanne's income and her receipt of $90,000 in community accounts, and the fact that the parties' lifestyle could not be maintained at the current level without accruing additional debt. The next day, Michael filed another motion seeking an award of "prospective attorney fees."

Jeanne filed responsive declarations to each of these motions. She asserted, among other things, that Michael had provided no substantiation for his proposed findings. In particular, she pointed out that with regard to his request to modify spousal support, Michael had not supported any of his factual assertions with a sworn declaration.

On June 9, 2009, the family court denied Michael's motion to compel and for attorney fees and costs, finding the pleadings deficient on their face. However, because the court had not considered Michael's request for modification of spousal support, it allowed him to file a motion for "reconsideration" of that matter. That same day, Michael filed such a motion asking the family court to reconsider his request for modification of spousal support. That matter was heard on June 23, 2009, at which time the court observed Michael had not provided any updated income information from which to recalculate spousal support: proof of income, pay stubs, W-2 forms from 2008, or any income and expense declaration. Michael advised the court that his pay stubs were "the same," and proceeded to explain again that the court had not taken the parties' community debts into account when it calculated interim spousal support. He maintained it was a burden for him to pay spousal support and attorney fees with an "eighty percent debt-to-income ratio" at the time of the parties' separation. He argued Jeanne had misled the court during the original order to show cause hearing. He sought permission to move his 401K plan to lower risk investments. Jeanne's counsel responded that issues pertaining to the parties' debts should be heard at the time of trial, and asked the court to reserve the matter on attorney fees. Finding that Michael had "fail[ed] to substantiate any change in

income," the court denied Michael's motion to modify spousal support, and reserved on the issue of attorney fees.

On June 24, 2009, Michael filed a notice of appeal from the June 9, 2009 and June 23, 2009 orders. Two days later, the family court entered its findings and order after hearing denying Michael's request to modify spousal support "based on [his] failure to provide proof of current and updated income . . . ." It reserved jurisdiction over attorney fees and costs.[3]

DISCUSSION

I. *Principles of Appellate Review*

We begin by explaining our limited role as an appellate court. Our jurisdiction is limited in scope by the notice of appeal and judgment or order from which the appeal is taken. (See *In re Conservatorship and Estate of Edde* (2009) 173 Cal.App.4th 883, 889-890; *Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073.) We are required to presume the trial court's judgment or order is correct and must draw all inferences in favor of the trial court's decision. (*In re Marriage of Arceneaux, supra*, 51 Cal.3d at p. 1133.) "Thus, even if there is no indication of the trial court's rationale for [its ruling], the court's decision will be upheld on appeal if reasonable justification for it can be found. 'We uphold judgments if they are correct for any reason, "regardless of the

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3 Arguably, Michael's notice of appeal from the June 23, 2009 minute order was premature given the family court's later filing of its findings and order after hearing. Jeanne does not contend, however, that his notice of appeal is deficient, and thus we shall liberally construe the notice of appeal as from the June 26, 2009 findings and order after hearing. (See California Rules of Court, rules 8.100(a)(2), 8.104(e).) All further statutory references are to the Family Code unless otherwise specified.

correctness of the grounds upon which the court reached its conclusion." ' " (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443.)

An appellant's brief should not merely repeat arguments unsuccessful in the superior court, but should set out a careful assertion of legal error with meaningful argument and discussion of authorities. (See *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2; *Wint v. Fidelity & Casualty Co.* (1973) 9 Cal.3d 257, 265; *108 Holdings, Ltd. v. City of Rohnert Park* (2006) 136 Cal.App.4th 186, 193, fn 3.) Points are deemed abandoned when they are entirely unsupported by argument or reference to the record. (*Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809, 816, fn. 5; *Kuperman v. Assessment Appeals Bd. No. 1* (2006) 137 Cal.App.4th 918, 931.)

" '[E]rror must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Further, we will not presume prejudice from an error. It is an appellant's burden to persuade us that the court erred in ways that result in a miscarriage of justice. (*In re Marriage of Dellaria* (2009) 172 Cal.App.4th 196, 204-205; Cal. Const., art. VI, § 13.)

Our review is governed by the appellate record; with rare exception, we are not permitted to consider new evidence and will not consider facts or contentions not supported by citations to the record. (See *In re Zeth S.* (2003) 31 Cal.4th 396, 405; clarified in *In re Josiah Z.* (2005) 36 Cal.4th 664, 676; *In re S.C.* (2006) 138 Cal.App.4th 396, 406-407 [appellate court can deem a contention unsupported by a record citation to

be without foundation and thus forfeited]; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247; *Oldenkott v. American Electric, Inc.* (1971) 14 Cal.App.3d 198, 207; Cal. Rules of Court, rule 8.204(a)(1)(C) ["Each brief must . . . [¶] . . . [¶] . . . [s]upport any reference to a matter in the record by a citation to the record"].) Along the same lines, we cannot address issues that were not properly raised and preserved in the trial court. (See *City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 684-685; *Royster v. Montanez* (1982) 134 Cal.App.3d 362, 367.) On appeal, as in the superior court, unsworn statements or argument by counsel or a pro per litigant are not evidence. (See *In re Zeth S.*, at p. 414, fn. 11.)

Self-represented litigants are held to the same standard as those represented by trained legal counsel. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Nwosu v. Uba*, *supra*, 122 Cal.App.4th at pp. 1246-1247; *In re Marriage of Falcone* (2008) 164 Cal.App.4th 814, 830.) " 'When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys. . . . Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.' " (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125-1126.)

II. *Michael's Motion to Augment Record and Jeanne's Motion to Strike the Augment*

Michael has moved to augment the appellate record with various exhibits on grounds that the "documents have recently become available" and they "are a necessary element of the record on appeal." He maintains no prejudice will result to Jeanne by granting his motion. Jeanne responded by filing a motion to strike the augmented exhibit

list and Michael's reply brief. The record does not show the documents were mistakenly omitted, that the family court considered the documents that are the subject of Michael's proposed augment, or that Michael requested that the judge consider them in connection with the order under review. Accordingly, we deny Michael's motion. (*Vons Cos., Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3; *In re Marriage of Forrest & Eaddy* (2006) 144 Cal.App.4th 1202, 1209.) We grant Jeanne's request to strike references in Michael's reply brief to that material.

III. *Issues Pertaining to the September 2008 Order Setting Interim Spousal Support and Awarding Pendente Lite Attorney Fees*

In the "Standard of Review" section of his brief and elsewhere, Michael advances various claims of error and judicial bias in connection with the family court commissioner's September 2008 order setting interim spousal support. Specifically, he maintains the commissioner exhibited bias and denied him a fair trial by (1) setting interim spousal support and awarding fees based on Jeanne's income and expense statement that contained numerous "discrepancies," which also had not been served on him until after the August 4, 2008 hearing; (2) ignoring the parties' community debt load and failing to make findings of fact as to those debts; (3) erroneously assuming he could withdraw more money from his 401K, which was already burdened with one loan; (4) ordering that he pay spousal support and attorney fees "based on a negative asset marriage . . . and [on] a standard of marriage that is based on debt"; and (5) miscalculating his actual income for 2008.

These particular claims are not cognizable because Michael did not file a notice of appeal from the family court's September 2008 findings and order after hearing setting temporary spousal support and awarding fees. These are orders from which direct appeals are authorized. (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368 [order regarding temporary spousal support and denying attorney fees and costs]; *In re Marriage of Campbell* (2006) 136 Cal.App.4th 502, 505-506; *In re Marriage of Weiss* (1996) 42 Cal.App.4th 106, 119 [pendente lite attorney fee order].) Indeed, the filing of a timely notice of appeal is a jurisdictional prerequisite to our consideration of these issues. (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113; *In re Jordan* (1992) 4 Cal.4th 116, 121; see *In re Marriage of Goddard* (2004) 33 Cal.4th 49, 57, fn. 4.) " 'Unless the notice is actually or constructively filed within the appropriate filing period, an appellate court is without jurisdiction to determine the merits of the appeal and must dismiss the appeal.' " (*Silverbrand*, at p. 113; *Imuta v. Nakano* (1991) 233 Cal.App.3d 1570, 1579, fn. 11 ["Compliance with the time for filing a notice of appeal is mandatory and jurisdictional"].) In short, we are without power to address Michael's challenges to the family court's interim spousal support order.

Michael's claims of judicial bias are not cognizable for another reason, that being they are raised for the first time on appeal. Though Michael makes reference to filing a "recusal" in both his opening and reply brief, no request for recusal or disqualification appears in the record. Faced with accusations of judicial bias for the first time on appeal, the Court of Appeal in *Moulton Niguel Water Dist. v. Columbo* (2003) 111 Cal.App.4th 1210 found a waiver of the appellate issue. It explained: "Bias and prejudice are grounds

for disqualification of trial judges. ([Code Civ. Proc.,] § 170.1, subd. (a)(6).) And if judges fail to recuse themselves, there is a statutory procedure to litigate the issue. ([Code Civ. Proc.,] § 170.3.) Owners did not take advantage of these procedures . . . . Moreover, owners did not preserve their claim of judicial bias for review because they did not object to the alleged improprieties and never asked the judge to correct remarks made or recuse himself." (*Moulton Niguel Water Dist*., at p. 1218, citing *People v. Seaton* (2001) 26 Cal.4th 598, 698 and *People v. Hines* (1997) 15 Cal.4th 997, 1040-1041; see also *People v. Fudge* (1994) 7 Cal.4th 1075, 1108.)

We reach the same conclusion here. By failing to object "at the earliest practicable opportunity" (Code Civ. Proc., § 170.3, subd. (c)(1)), Michael waived the right to pursue this issue on appeal. (See, e.g., *In re Steven O.* (1991) 229 Cal.App.3d 46, 53-54; see also *People v. Brown* (1993) 6 Cal.4th 322, 335-336 [litigant may, and should, seek to resolve constitutional due process claim of judicial bias by statutory means, and negligent failure to do so may constitute a forfeiture of the litigant's constitutional claim]; *Roth v. Parker* (1997) 57 Cal.App.4th 542, 548 [in civil cases a constitutional question must be raised at the earliest opportunity or it will be considered waived].) As stated by the *Steven O*. court, Code of Civil Procedure section 170.3's "promptness requirement is not to be taken lightly, especially when the party delays in challenging the judge until after judgment. Otherwise, a defendant can sit through a first trial hoping for an acquittal, secure in the knowledge that he can invalidate the trial later if it does not net a favorable result." (*In re Steven O*., 229 Cal.App.3d at p. 55.) More generally, in *People v. Scott* (1997) 15 Cal.4th 1188, the court said: " ' "It would seem . . . intolerable to

permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he is aware and thereby permitting the proceedings to go to a conclusion which he may acquiesce in, if favorable, and which he may avoid, if not." ' " (*Id.* at p. 1207.)

As in the foregoing cases, Michael believed he was faced with "numerous instances" of judicial bias, but did not object on those grounds or take action at or after the hearings. His inaction constitutes a waiver of the bias issue. Finally, he has not provided meaningful analysis or argument supporting his claim of judicial bias, including case law holding a claim of judicial bias may be raised for the first time on appeal. This deficiency is an additional ground for finding a waiver of his appellate contention. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.*, *supra*, 21 Cal.4th at p. 366, fn. 2.)

We note that during the August 4, 2008 hearing, the family court repeatedly sought to explain that its spousal support order was temporary, and that Michael would eventually be entitled to receive credits for the prior spousal support he had paid and other debts if he could prove them.[4] Because the court perceived Michael's difficulty in understanding the nature and purpose of its order, it urged him to obtain legal advice. Further, though Michael claims the family court accepted Jeanne's late filings and not his own, his record citation shows only that the family court accepted *Michael's* late-filed

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4 The purpose of a temporary support order is not to determine the merits but " 'solely to preserve the family and the wife's separate property intact until the court eventually determine[s] the case on the merits.' " (*In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1038.)

income and expense declaration at the August 4, 2009 hearing, but declined to accept his late-filed declaration at the June 9, 2009 hearing. The family court nevertheless listened to Michael's lengthy arguments concerning the community debt, his previously ordered obligation to pay Jeanne attorney fees, and his inability to borrow from his 401K. When the court realized it had overlooked Michael's request to modify spousal support, it permitted him to file a motion for reconsideration and considered that motion several days later. On this record, Michael's characterization that the court "mishandled" these matters has no legal or factual support.

Having reviewed the reporters' transcripts of the proceedings, we conclude that even assuming Michael had preserved his claims of bias as to that order and the June 2009 orders, we would reject them on grounds the family court's comments and rulings were not indicative of bias or prejudice. "When reviewing a charge of bias, '. . . the litigants' necessarily partisan views should not provide the applicable frame of reference. [Citations.]' [Citation.] Potential bias and prejudice must clearly be established [citation] . . . . 'Bias or prejudice consists of a "mental attitude or disposition of the judge towards [or against] a party to the litigation. . . ." ' [Citations.] Neither strained relations between a judge and an attorney for a party nor '[e]xpressions of opinion uttered by a judge, in what he conceived to be a discharge of his official duties, are . . . evidence of bias or prejudice.' " (*Roitz v. Coldwell Banker Residential Brokerage Co*. (1998) 62 Cal.App.4th 716, 724.) Thus, a party cannot premise a claim of bias on a judge's statements made in her official capacity (*Jack Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal.App.3d 1023, 1031), or a judge's substantive opinion on the evidence (*Kreling v.*

Superior Court (1944) 25 Cal.2d 305, 312) or the judge's ruling — even erroneously — against him (*McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11).

IV. *June 9, 2009 Orders Denying Michael's Motion to Compel Discovery and Request for Attorney Fees and Costs*

A. *Motion to Compel Responses to Discovery*

Michael does not meaningfully address the family court's June 9, 2009 order denying his motion to compel discovery. He does not explain in his opening brief why his papers met the requirements of the Code of Civil Procedure or local rules, the relevance of the sought-after discovery, or whether the trial court's ruling had "no legal justification" or was otherwise an abuse of discretion, which is the applicable standard of review. (See *Scripps Health v. Superior Court* (2003) 109 Cal.App.4th 529, 533.) Under this standard, discretion is abused whenever the court exceeds the bounds of reason, all of the circumstances before it being considered. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 566.) "A trial court's exercise of discretion will be upheld if it is based on a 'reasoned judgment' and complies with the '. . . legal principles and policies appropriate to the particular matter at issue.' " (*Bullis v. Security Pacific National Bank* (1978) 21 Cal.3d 801, 815.) Absent a showing by Michael that the family court's actions met this difficult standard, we presume its ruling to be correct. (*In re Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1133.) Finally, we decline to consider Michael's arguments as to discovery in his reply brief, which are unsupported by any authority or reasoned argument in any event. (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 214.) Accordingly, Michael has not met his appellate burden to demonstrate error.

B. *Michael's Request for Attorney Fees*

Michael does not meaningfully address the family court's order denying his request for attorney fees. We need not address that aspect of the family court's order.

V. *June 26, 2009 Order Denying Motion to Modify Spousal Support*

Discussing each of the factors of section 4320, Michael essentially reargues his motion to modify the temporary spousal support order. He asks us to order that he pay zero in spousal support, vacate the order awarding Jeanne attorney fees, and require her to refund all attorney fees to him. In making these arguments, Michael misunderstands our role as an appellate court, which as we have pointed out above is not to rule on his motion anew but to consider the family court's ruling under the relevant principles and standards of appellate review. (See *Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1388 ["Arguments should be tailored according to the applicable standard of appellate review"]; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528; *People v. Foss* (2007) 155 Cal.App.4th 113, 126.)

In this instance, we review an order determining temporary spousal support under the deferential abuse of discretion standard. (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1327; *In re Marriage of de Guigne* (2002) 97 Cal.App.4th 1353, 1366.) We determine if the court's factual determinations are supported by substantial evidence, and whether it acted reasonably in exercising its discretion. (*Id*. at p. 1360.) "We do not substitute our judgment for that of the trial court, but confine ourselves to determining whether any judge could have reasonably made the challenged order." (*Ibid*.)

Section 3600 provides: "During the pendency of any proceeding for dissolution of marriage . . . , the court may order (a) the husband or wife to pay any amount that is necessary for the support of the wife or husband. . . ." "Awards of temporary spousal support rest within the broad discretion of the trial court and may be ordered in 'any amount' (§ 3600) subject only to the moving party's needs and the other party's ability to pay." (*In re Marriage of Murray* (2002) 101 Cal.App.4th 581, 594 (*Murray*).) Permanent spousal support awards are constrained by the factors set forth in section 4320, but "there are no explicit statutory standards governing temporary [spousal] support." (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 312.) Thus, an award of temporary spousal support is "based on 'a showing of two conditions: the [supported] party's needs, and the other party's ability to pay. . . .' " (*In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 159; *Murray*, at p. 594; see *In re Marriage of Wittgrove*, *supra*, 120 Cal.App.4th at p. 1327.) In exercising its broad discretion to fix the amount of temporary spousal support, the family court is free to use standardized temporary support guidelines, but it is "not restricted by any set of statutory guidelines . . . [and] [¶] . . . may properly consider the 'big picture' concerning the parties' assets and income available for support in light of the marriage standard of living." (*Ibid.*)[5]

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5 A temporary spousal support order "may be modified . . . at any time except as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify. . . ." (§ 3603.) Section 3603 " 'has been construed to prohibit retroactive modifications of temporary [spousal] support . . . .' " (*Murray, supra,* 101 Cal.App.4th at p. 596.) While Michael requests that we order a refund of the attorney fees he has paid, he does not ask that we refund his interim spousal support payments. This retroactivity prohibition does not appear to be implicated.

Under the above principles, Michael's challenge to the family court's order fails. The family court decided implicitly if not expressly that there was no change in Michael's ability to pay or Jeanne's needs so as to justify a modification of temporary spousal support. We presume the record contains evidence to support every finding of fact, and absent a fair summary of the evidence and explanation as to why it is insufficient to support such a finding, we shall not disturb it. (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.) To successfully challenge this ruling, it is not sufficient that Michael simply reargue his motion; he must show the family court abused its discretion in denying his request to modify temporary support. That is, he must explain in a reasoned manner how the family court's decision to deny his request exceeds the bounds of reason and results in a miscarriage of justice under the legal standards applicable to such motions. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 566; *Fassberg Const. Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 762-763.) He has not made that showing here. He has not addressed the trial court's reasoning as to the adequacy of his evidentiary showing in his motion, i.e., the absence of any current income information, including a current income and expense declaration or supporting declaration signed under penalty of perjury. (See Cal. Rules of Court, rules 5.118(b), 5.128(c).) This court "is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment." (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 701, p. 769.)

Accordingly, absent an affirmative showing of error by the family court and resulting prejudice, we are compelled to uphold its June 9, 2009 and June 26, 2009 orders.

DISPOSITION

The orders are affirmed.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.